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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,133	12/20/2006	Douglas A. Abbott	1700.191USU	9341

27623 7590 10/08/2008
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EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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10/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/575,133	Applicant(s) ABBOTT, DOUGLAS A.	
	Examiner JAMES N. SMALLEY	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 7, 10, 28, and 39-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 7 and 28, it is unclear how a "notch," a phrase which implies material removed from a solid object, can bear the flat surface. It is suggested the Applicant reword the claim to define the structure that is physically present, not that which is not, as implied by the word "notch."

Regarding claim 10, the limitation "the edge," at the end of line 1 and wrapping to line 2 of the claim, lacks antecedent basis.

Regarding claim 39, from which the remaining claims depend, the limitation "the first thread of the neck," in line 5 of the claim lacks antecedent basis.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 7, 10, 14-16, 19-29, 32-39, 41-43 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minnette et al. US 5,988,412.

Minnette '412 teaches a dispensing container (26) with a neck (32) and a generally flat shoulder, two lugs (34) extending from the shoulder, a first thread (30), and a closure (10) with a generally circumferential outer skirt (18), a generally circumferential inner skirt (20), a second thread (22), and a slot (16) defining a vertical edge. Examiner notes the lugs extend from a region which borders both the neck and the shoulder.

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Minnette '412, as applied, teaches all limitations substantially as claimed, but fails to teach the claimed thread pitch.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the threads to any suitable dimension and pitch, motivated by the benefit of providing a controlled opening, while adequately securing the closure cap to the container neck. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Examiner asserts it is obvious and well known to configure the threads to any suitable dimension and pitch, motivated by the benefit of providing a controlled opening, while adequately securing the closure cap to the container neck.

Regarding claim 10, the vertical orientation of the sides of the slot comprise 90-degree angles, and are thus "angular."

Regarding claims 14-15, 32-33, with respect to the diameter of the shoulder, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the size of the container and shoulder to 0.5 to 0.75 inches, or any other suitable size, motivated by design choice to configure the container to hold a specific volume of contents. It is well known to vary the size of containers to vary the container volume, to provide a user with a particular quantity of a product. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 16, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shape of the container to taper the skirts to 0.5 degrees to the longitudinal axis, or any other configuration, because such a modification is mere change in shape of a design. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

5. Claims 1-4, 6, 8-10, 14-16, 19-25, 27, 29-39, 43 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uhlig US 4,116,351.

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Uhlig '351, in the embodiment of figures 9-14, teaches a dispensing container (31) with a neck (34) and a generally flat shoulder (35), two lugs (36) extending from the shoulder, a first thread (34a), and a closure (38) with a generally circumferential outer skirt (41), a generally circumferential inner skirt (42), a second thread (42b), and a slot (44) defining a vertical edge.

Uhlig '351 as applied teaches all limitations substantially as claimed but fails to teach the thread pitch.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the threads to any suitable dimension and pitch, motivated by the benefit of providing a controlled opening, while adequately securing the closure cap to the container neck. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Examiner asserts it is obvious and well known to configure the threads to any suitable dimension and pitch, motivated by the benefit of providing a controlled opening, while adequately securing the closure cap to the container neck.

Regarding claims 14-15, 32-33, with respect to the diameter of the shoulder, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the size of the container and shoulder to 0.5 to 0.75 inches, or any other suitable size, motivated by design choice to configure the container to hold a specific volume of contents. It is well known to vary the size of containers to vary the container volume, to provide a user with a particular quantity of a product. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claims 16 and 43, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shape of the container to taper the skirts to 0.5 degrees to the longitudinal axis, or any other configuration, because such a modification is mere change in shape of a design. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

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6. Claims 5 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uhlig US 4,116,351 in view of Uhlig US 3,949,893.

Uhlig '351 as applied above, teaches all limitations substantially as claimed but does not teach the lugs extending radially outward from the container neck.

Uhlig '893 teaches lugs (40) extending radially outward from the container neck.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lugs of Uhlig '351, providing the integral neck lugs taught by Uhlig '893, because the lugs are mechanical equivalents and would function equally well.

7. Claims 7 and 28 lack are rejected under 35 U.S.C. 103(a) as being unpatentable over Uhlig US 4,116,351 in view of Kusz US 5,687,863.

Uhlig '351 as applied above, teaches all limitations substantially as claimed but does not teach the notch bearing a flat surface.

Kusz '863 teaches a lug (52) with a notch bearing flat surface (54).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lugs of Uhlig '351, providing the notched lugs taught by Kusz '863, because the lugs are mechanical equivalents and would function equally well.

8. Claims 11 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minnette et al. US 5,988,412 in view of McKirnan US 3,854,622.

Minnette '412 as applied above teaches all limitations substantially as claimed including grip knurls (36) but does not disclose the structure or plurality of the region.

McKirnan '622 teaches grip portion (45) located at the bottom edge of the outer skirt, and extending upwardly, for locating a depressible region and providing grip.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Minnette '412, providing the grip taught by McKirnan '622, motivated by the benefit of locating and improving the grip of a user when compressing the cap skirt during removal.

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9. Claims 11 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uhlig US 4,116,351 in view of Herr US 6,357,615.

Uhlig '351 as applied above teaches all limitations substantially as claimed but does not teach knurls.

Herr '615 teaches ribs (114a) for gripping, which extend from a lower edge of a skirt outer surface in an upward direction.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the skirt of Uhlig '351, providing ribs such as those taught by Herr '615, motivated by the benefit of improving the grip of a user when removing the cap.

10. Claims 12-13 and 41-42 lack are rejected under 35 U.S.C. 103(a) as being unpatentable over Minnette et al. US 5,988,412 in view of Earls US 4,273,247.

Minnette '412 as applied above, teaches all limitations substantially as claimed but does not teach three to six ribs extending from an inner surface of the outer skirt from the middle toward the top end.

Earls '247 teaches six ribs (31), extending from about midway along an outer skirt, which support an inner skirt.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Minnette '412, providing the ribs taught by Earls '247, motivated by the benefit of bracing the inner skirt.

11. Claims 17 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minnette et al. US 5,988,412 in view of Mumford US 4,134,513.

Minnette '412 as applied above, teaches all limitations substantially as claimed but does not teach a plug seal.

Mumford '513 teaches a sealing plug (25) for sealing a container opening.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Minnette '412, providing the plug seal taught by Mumford '513, motivated by the benefit of sealing the closure opening.

12. Claims 17 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uhlig US 4,116,351 in view of Mumford US 4,134,513.

Uhlig '351 as applied above, teaches all limitations substantially as claimed but does not teach a plug seal.

Mumford '513 teaches a sealing plug (25) for sealing a container opening.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Uhlig '351, providing the plug seal taught by Mumford '513, motivated by the benefit of sealing the closure opening.

13. Claims 18 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minnette et al. US 5,988,412 in view of Klima, Jr. et al. US 6,319,453.

Minnette '412 as applied above, teaches all limitations substantially as claimed but does not teach a foam layer adapted to seal the orifice when the closure is in the locking position.

Klima '453 teaches seal (30) for sealing an orifice when a closure is in a locking position, and discloses in col. 10, line 54, the seal is formed of foam.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Minnette '412, providing a foam seal, such as that taught by Klima '453, motivated by the benefit of sealing the container when the closure is in the locking position.

14. Claims 18 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uhlig US 4,116,351 in view of Klima, Jr. et al. US 6,319,453.

Uhlig '351 as applied above, teaches all limitations substantially as claimed but does not teach a foam layer adapted to seal the orifice when the closure is in the locking position.

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Klima '453 teaches seal (30) for sealing an orifice when a closure is in a locking position, and discloses in col. 10, line 54, the seal is formed of foam.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Uhlig '351, providing a foam seal, such as that taught by Klima '453, motivated by the benefit of sealing the container when the closure is in the locking position.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James N Smalley/
Examiner, Art Unit 3781

/Anthony D Stashick/
Anthony D Stashick
Supervisory Patent Examiner, Art Unit 3781